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8

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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 BRIAN GLAUSER, individually and on behalf
of all others similarly situated,

14 Plaintiff,

15 v.

16 TWILIO, INC., a Delaware corporation,
GROUPME, INC., a Delaware corporation,

17 Defendants.
18

Case No. CV11-2584 PJH

**NOTICE OF MOTION AND MOTION TO
DISMISS CLASS ACTION COMPLAINT**

Date: October 12, 2011
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Phyllis J. Hamilton

1 **NOTICE OF MOTION AND MOTION TO DISMISS CLASS ACTION COMPLAINT**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on October 12, 2011 at 9:00 a.m., or as soon thereafter as
 4 counsel may be heard in the above entitled court, before the Honorable Phyllis J. Hamilton, United
 5 States District Judge, in Courtroom 3, 3rd Floor, 1301 Clay Street, Oakland, CA 94612, defendant
 6 Twilio, Inc. ("Twilio") will and hereby does move the Court, for an Order dismissing with
 7 prejudice all claims asserted against it pursuant to Rule 12(b)(6) of the Federal Rules of Civil
 8 Procedure. Defendant seeks dismissal on grounds that plaintiff fails to state a plausible cause of
 9 action with the specificity required by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and
 10 *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). In the alternative, if the Court declines to dismiss the
 11 Complaint against Twilio, the Court should refer this matter to the Federal Communications
 12 Commission ("FCC") under the doctrine of primary jurisdiction.

13 This motion is based upon this Notice of Motion and Motion; the attached Memorandum
 14 of Points and Authorities; the concurrently-filed Request for Judicial Notice; and the papers and
 15 pleadings on file with the Court, including any reply papers to be filed; and such other written or
 16 oral argument as may be presented at the hearing on this Motion.

17
 18 Dated: August 25, 2011

Respectfully submitted,

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 20 By: /s/ Patrick S. Thompson

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 27 *Twilio, Inc., a Delaware Corporation*

PROOF OF SERVICE

I, Randolph Roque, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 601 South Figueroa Street, 41st Floor, Los Angeles, California 90017.

On August 25, 2011, I served the following documents by placing a true copy thereof in a sealed envelope(s) on the persons below as follows:

NOTICE OF MOTION AND MOTION TO DISMISS CLASS ACTION COMPLAINT

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☐ (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

- 1 ☒ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the
 2 office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set
 3 forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is
 4 generated automatically by the ECF system upon completion of an electronic filing. The
 5 NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof
 6 of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to
 7 any document served in the traditional manner upon any party appearing pro se."
- 8 ☐ (EXPRESS MAIL) I placed the envelope for collection and mailing, following our
 9 ordinary business practices. I am readily familiar with this firm's practice for collecting
 10 and processing Express Mail for mailing. On the same day that Express Mail is placed
 11 for collection and mailing, it is deposited in the ordinary course of business with the
 12 United States Postal Service, in a post office, mailbox, sub-post office, substation, mail
 13 chute, or other like facility regularly maintained by the United States Postal Service for
 14 receipt of Express Mail.
- 15 ☐ (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained
 16 by Federal Express, an express service carrier, or delivered to a courier or driver
 17 authorized by said express service carrier to receive documents, a true copy of the
 18 foregoing document in sealed envelopes or packages designated by the express service
 19 carrier, addressed as stated above, with fees for overnight delivery paid or provided for.
- 20 ☐ (MESSENGER SERVICE) I served the documents by placing them in an envelope or
 21 package addressed to the persons at the addresses listed and provided them to a
 22 professional messenger service for service. A separate Personal Proof of Service
 23 provided by the professional messenger service will be filed under separate cover.
- 24 ☐ (FACSIMILE) Based on an agreement of the parties to accept service by fax
 25 transmission, I faxed the documents to the persons at the fax numbers listed. No error
 26 was reported by the fax machine that I used. A copy of the record of the fax
 27 transmission, which I printed out, is attached.
- 28 ☐ (E-MAIL or ELECTRONIC TRANSMISSION) Based on a court order or an agreement
 of the parties to accept service by e-mail or electronic transmission, I caused the
 documents to be sent to the persons at the e-mail addresses listed. I did not receive,
 within a reasonable time after the transmission, any electronic message or other
 indication that the transmission was unsuccessful.

I declare under penalty of perjury that I am employed in the office of a member of the bar
 of this Court at whose direction this service was made and that the foregoing is true and correct.

Executed on August 25, 2011, at San Francisco, California.

Randolph Roque
 (Type or print name)


 (Signature)